

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NOV 21 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FACEBOOK, INC., a Delaware
corporation,

Plaintiff - Appellee,

v.

STEVEN VACHANI,

Defendant - Appellant.

No. 13-16795

D.C. No. 5:08-cv-05780-LHK
Northern District of California,
San Jose

ORDER

Before: SILVERMAN, WARDLAW, and BYBEE, Circuit Judges.

A review of the record and appellant's October 3, 2013 response to this court's order to show cause demonstrates that the district court's August 7, 2013 "order re attorneys fees and costs for renewed deposition" challenged in this appeal was not final or appealable at the time that the notice of appeal was filed. *See* 28 U.S.C. § 1291; *see also In re San Vicente Med. Partners Ltd.*, 865 F.2d 1128, 1131 (9th Cir. 1989) (order) (magistrate judge order not final or appealable); *Koninklijke Philips Elecs., N.V. v. KXD Tech., Inc.*, 539 F.3d 1039, 1042 (9th Cir. 2008) (order of civil contempt or sanctions against a party to ongoing litigation is generally not immediately appealable); *see, e.g., Cunningham v. Hamilton County*, 527 U.S. 198,

210 (1999) (holding that sanctions orders under Fed. R. Civ. P. 37(a)(4) are not immediately appealable); *Riverhead Savings Bank v. Nat'l Mortg. Equity Corp.*, 893 F.2d 1109, 1113 (9th Cir.1990) (absent certificate under Fed. R. Civ. P. 54(b), a lower court order awarding Rule 11 sanctions against a party generally is not appealable prior to the entry of final judgment). Consequently, this appeal is dismissed for lack of jurisdiction.

Appellant's October 2, 2013 "amended notice of appeal" is proceeding in this court as pending appeal no. 13-17102. *See Litchfield v. Spielberg*, 736 F.2d 1352, 1355 (9th Cir. 1984) (an appeal from a final judgment draws into question all earlier, non-final orders and rulings which produced the judgment).

The Clerk shall credit the filing fee paid in appeal no. 13-16795 to appeal no. 13-17102.

All other pending motions are denied as moot.

DISMISSED.